

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

**SCOTTY ELDRIDGE and
DIAMOND JW, INC. d/b/a/
WHITWORTH ENGINEERING,**

Plaintiffs,

vs.

SIMCO DRILLING EQUIPMENT, INC.,

Defendant.

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Civil Action No. 4:18-cv-00018-O

**DEFENDANT'S MOTION TO STRIKE PLAINTIFFS' EXPERT WITNESS
HUMA HAIDER, M.D.**

COMES NOW Defendant Simco Drilling Equipment, Inc. ("Defendant" or "Simco") and files its Motion to Strike Plaintiffs' Expert Witness Huma Haider, M.D. In support thereof, Defendant respectfully shows the Court the following:

I. INTRODUCTION

This lawsuit arises from an incident that occurred on or about December 14, 2015, wherein Plaintiffs Scotty Eldridge and Diamond JW, Inc. d/b/a Whitworth Engineering allege that Eldridge was injured while working on a Simco Model SK-1 drilling rig (Drilling Rig #1) that Whitworth Engineering purchased from Defendant. Plaintiffs further allege that both Drilling Rig #1, and another Simco Model SK-1 owned by Whitworth Engineering (Drilling Rig #2), were defective and failed. Plaintiffs advance negligence and strict products liability causes of action against Defendant.

Pursuant to the Court's Scheduling Order, Plaintiffs' Initial Expert Designation and Report Deadline was June 25, 2018. (Doc. 7). Plaintiffs did not designate their

retained medical expert, Huma Haider, M.D., until October 16, 2018 – almost four months after Plaintiffs’ deadline and following Defendant’s own expert designation deadline. (Doc. 11).

II. SUMMARY OF MOTION TO STRIKE

Defendant moves to strike Dr. Haider as an untimely designated expert witness. Fed. R. Civ. P. 26(a)(2)(A) states that that “a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.” Fed. R. Civ. P. 26(a)(2)(A). Unless stipulated by the parties or ordered by the Court, subparagraph (B) requires the disclosure to “be accompanied by a written report—prepared and signed by the witness—if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party’s employee regularly involve giving expert testimony.” Fed. R. Civ. P. 26(a)(2)(B). Here, the Court set a deadline for Plaintiffs’ Rule 26(a)(2) disclosures (Doc. 7), and Plaintiffs failed to comply with the Court’s order.

Under Fed. R. Civ. P. 37(c)(1), if a party fails to provide information or identify a witness as required by Rule 26(a)(2), “the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or harmless.” Fed. R. Civ. P. 37(c)(1). Plaintiffs’ untimely disclosure of Dr. Haider is neither substantially justified nor harmless. Plaintiffs’ failure to designate Dr. Haider or produce her report until after Defendant’s own expert designation deadline has seriously prejudiced Defendant and prevented it from responding to the opinions in Dr. Haider’s report prior to its deadline. For these reasons, Dr. Haider must be stricken as an expert witness pursuant to Fed. R. Civ. P. 26(a)(2) and 37(c)(1).

III. EVIDENCE IN SUPPORT OF MOTION

In support of its Motion to Strike, Defendant relies upon the pleadings file with the Court.

IV. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests this Court grant its Motion to Strike Plaintiff's Expert Witness Huma Haider, M.D. as untimely. Defendant further requests that this Court grant any such other relief to which Defendant may be entitled at law or in equity.

Respectfully submitted,

By: /s/ Randy A. Nelson

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CERTIFICATE OF CONFERENCE

On October 19, 2018, counsel for Defendant, Randy A. Nelson and Anne-Alise "Ali" Fritsche, attempted to confer with counsel for Plaintiffs, Jim Zadeh, regarding Defendant's Motion to Strike. Counsel was unable to contact Mr. Zadeh, so Plaintiffs are presumed opposed to this motion.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record through electronic notice provided by the United States Court for the Northern District of Texas under LOC. R. N.D. TEX. 5.1(A)(1) on this 22nd day of October, 2018.

/s/ Anne-Alise "Ali" Fritsche

Randy A. Nelson

Anne-Alise "Ali" Fritsche